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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in South Africa

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the preliminary report on the situation of human rights in South Africa prepared by the Ad Hoc Working Group of Experts on Southern Africa of the Commission on Human Rights in accordance with Commission resolution 1991/21 of 1 March 1991 and Economic and Social Council decision 1991/237 of 31 May 1991.

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ANNEX

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 10	3
II.	REPEAL OF APARTHEID LEGISLATION	11 - 13	4
III.	CONSTITUTIONAL NEGOTIATIONS	14 - 16	5
IV.	RIGHT TO LIFE	17 - 21	6
V.	POLITICAL TRIALS AND ADMINISTRATION OF JUSTICE	22 - 24	7
VI.	FREEDOM OF EXPRESSION	25 - 28	7
VII.	TRADE UNION ACTIVITIES AND THE SITUATION OF BLACK WORKERS	29 - 31	8
VIII.	RIGHT TO EDUCATION	32	8
IX.	CONCLUSIONS	33 - 43	8

I. INTRODUCTION

1. The Commission on Human Rights, at its forty-seventh session, adopted resolution 1991/21 of 1 March 1991, by which it decided to renew the mandate of the Ad Hoc Working Group of Experts on Southern Africa and requested it to continue to examine the situation regarding the violations of human rights in South Africa. The Working Group was further requested to submit brief preliminary reports to the General Assembly at its forty-sixth and forty-seventh sessions, together with an interim report to the Commission at its forty-eighth session and a final report at its forty-ninth session.

2. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Leliel Mikuin Balanda (Zaire), Chairman/Rapporteur; Mr. Armando Entralgo (Cuba); Mr. Felix Ermacora (Austria); Mr. Elly Elikunda E. Mtango (United Republic of Tanzania); Mr. Zoran Pajic (Yugoslavia); and Mr. Mulka Govinda Reddy (India).

3. The Commission on Human Rights further requested the Working Group, in fulfilment of its mandate under resolution 1991/21, to visit South Africa to gather information from individuals and organizations in order to ascertain the situation of human rights in that country.

4. In pursuance of that request by the Commission on Human Rights, the Chairman of the Working Group addressed a letter dated 12 April 1991 to the Permanent Representative of South Africa to the United Nations Office at Geneva, drawing his attention to Commission on Human Rights resolution 1991/21 and apprising him of the fact that the Working Group had expressed the hope that his Government would authorize it to visit South Africa in 1991. A reply was requested by 15 June 1991.

5. The request to visit South Africa was repeated in a further letter, which the Chairman addressed to the Permanent Representative on 3 June 1991.

6. No written response was received by the Working Group to those letters or to other informal contacts. Consequently, on 1 July 1991, the Chairman addressed a letter to the Permanent Representative informing him that, since it had not been possible for him to furnish a clear and positive reply within the time indicated in the Chairman's previous letters, it would no longer be possible to arrange, in the time still left, for a meaningful mission to South Africa. He expressed the hope that in the near future the Government of South Africa would be able to authorize the Working Group to visit that country. The Working Group consequently decided, in keeping with past practice, to hold hearings in London from 22 to 26 July 1991 in order to take testimony from various organizations and individuals.

7. Owing to the failure of the Government of Zaire to grant permission to the Working Group's Chairman/Rapporteur, Mr. M. L. Balanda, to leave his country, he was unable to participate in the hearings and deliberations of the

Working Group in London and Geneva. The members of the Working Group wish to record their great regret and disappointment in that regard. The proceedings of the Working Group were therefore presided over by Acting Chairmen, on a rotating basis. The Chairman, Mr. M. L. Balanda, finally arrived at Geneva on 16 August 1991 following several interventions by the United Nations with the Government of his country. At that time he approved the text of the present report.

8. During the series of meetings held in London, testimony was heard from a representative of the International Labour Organisation (ILO) and from 10 other witnesses, including representatives of the Human Rights Commission of South Africa, South Africa: The Imprisoned Society, the Independent Board of Inquiry into Informal Repression, Amnesty International, Article 19 and the Anti-Apartheid Movement. Two witnesses appeared in their personal capacity. During the meetings at Geneva, testimony was heard from a representative of Lawyers for Human Rights of South Africa and from a witness appearing in his personal capacity.

9. In its last report to the Commission on Human Rights (E/CN.4/1991/10), the Working Group dealt with various aspects of the situation regarding violations of human rights in South Africa and took note of the intention of the Government of South Africa, as announced by President F. W. de Klerk in February 1990, to repeal some important provisions of the apartheid legislation. The Commission on Human Rights commended the positive measures that had been adopted in South Africa in 1990. In pursuance of that policy, the abolition of the Separate Amenities Act and the lifting of the state of emergency were considered to be very important steps forward.

10. The present report, which should be read in conjunction with the aforementioned report to the Commission on Human Rights, touches briefly on some of the main developments of the human rights situation in South Africa between February and August 1991.

II. REPEAL OF APARTHEID LEGISLATION

11. In June 1991, the Government of South Africa abolished the Land Acts of 1913 and 1936, the Group Areas Act and the Population Registration Act. In addition, parts of the Internal Security Act were amended. However, it must be mentioned that the attention of the Working Group has been drawn to the fact that a large number of discriminatory laws still remain on the statute books.

12. As regards the Land Acts, the issue of the rights of Black persons who have been continuously and systematically removed by force from their ancestral land raises very important fundamental questions of human rights that cannot be solved by the mere repeal of some discriminatory legislation; the entire Bantustan issue, which has not been covered by the recent repeal of apartheid legislation, must also be addresed.

13. Similarly, the piecemeal amendments to the Internal Security Act are also inadequate. The greater part of that Act remains on the statute books and is applied in conjunction with the relevant provisions of the Criminal Procedures Act, which have not been amended. Although sections 28 and 50A of the Internal Security Act have been repealed, section 50, which permits preventive detention for a period of 14 days, and section 31, which allows the detention of witnesses, are still intact. In addition, section 29 of the Act, which previously permitted indefinite incommunicado detention, has now been amended to allow detention without charge for 10 days and permits a detainee to be held in solitary confinement without access to legal representatives or family members. This 10-day period may be renewed by application before a Supreme Court judge and in the absence of the detainee or his/her legal representative. The Human Rights Commission of South Africa has expressed concern in that regard since, in the past, 41 per cent of all known deaths in detention occurred within the first six days of confinement. It should also be noted that, in place of the emergency regulations, the Ministry of Law and Order on 10 April 1991 published a declaration of "unrest areas" under the Public Safety Act, 1953. That Act also permits the South African authorities to detain persons for a period of 30 days and allows the Minister to extend the period as long as the said regulations remain in force.

III. CONSTITUTIONAL NEGOTIATIONS

14. The Groote Schuur and Pretoria Minutes, which were discussed in and annexed to the Working Group's report to the Commission on Human Rights (E/CN.4/1991/10), contained various agreements reached by the Government with representatives of the Black majority of South Africa. Considerable difficulties in the implementation of those agreements have arisen since that time, notably in regard to the return of exiles and the release of political prisoners.

15. Under the Pretoria Minutes, an agreement has been reached that all political prisoners would be released by 30 April 1991. Over 1,000 have been released, but a significant number (reportedly up to 800) was said to remain in prison. Attention was drawn to the arbitrary decision concerning the selection of those who have been released so far and those who are still retained in prison.

16. According to information received from the Office of the United Nations High Comissioner for Refugees (UNHCR), it is estimated that 40,000 South Africans are in exile, 7,000 of whom have applied for indemnity. At the time of writing the present report, 5,000 of those applications had been processed and approved, but it would appear that only 650 refugees had returned. The difficulties in the repatriation process stem from the lack of a general amnesty for the returnees in respect of offences previously committed in furtherance of their political beliefs, as well as from the requirement that each returnee fill in forms listing all past offences. On the other hand, the Government has not offered the necessary guarantees of safety and security, owing to the fact that it can at any time invoke previous offences not listed by the returnee. This appears to have deterred many potential repatriates.

IV. RIGHT TO LIFE

17. The Working Group reported to the Commission on Human Rights on the situation with respect to capital punishment and executions (E/CN.4/1991/10, paras. 126-132). In that respect, the Working Group wishes to point out that the Criminal Law (Amendment) Act No. 107 (1990) is not applicable in the Bantustans.

18. The Working Group notes with great concern that violations of the right to life continue to be perpetrated by the security forces. According to information received during the course of hearings in London in July 1991, at least three deaths in detention have been reported since February 1991, and several persons have been assassinated by hit squads and other vigilant groups without adequate intervention being made on the part of law enforcement authorities. It has been reported by the Human Rights Commission of South Africa that, during the period June 1990 to June 1991, 34 persons died and 42 were injured at the hands of hit squads.

19. The most blatant expression of the lack of respect for the right to life has emerged from the worsening situation as regards the violence that started initially in Natal and later spread to Transvaal, as confirmed by an in-depth inquiry into the situation in Natal by an investigative committee of the International Commission of Jurists. In its last report to the Commission on Human Rights (E/CN.4/1991/10), the Working Group mentioned the possibility of complicity on the part of security forces in fomenting violence. Recent reports concerning the admission by Ministers of the Government of South Africa of the fact that R250,000 had secretly been given to the Inkatha Freedom Party (IFP) and was reportedly used to discredit legitimate political parties with which the Government was in the process of negotiating a peaceful settlement, together with reports of the possible use of Namibian mercenaries in the killing of passengers on a train in September 1990, raise questions of a most serious nature. The right to life is also endangered by the activities of death squads, vigilantes and right-wing groups.

20. Several witnesses testified that Inkatha supporters were responsible for a large number of violent incidents. An eyewitness testified before the Working Group that Inkatha supporters who had fired at random on members of the public during a rally at Bekkersdal were neither prevented from doing so by the security forces nor were those responsible for the assaults apprehended. Further, the wounded were denied assistance by police forces. A 14-year-old boy who had been shot in the head during the incident later died in hospital.

21. Death sentences continue to be handed down. However, it was reported to the Working Group that no executions of political prisoners had taken place in the previous 18 months. According to some sources, it would appear that the moratorium on death sentences had expired and in law it had again become possible to carry out executions. At the end of June 1991, 327 persons were said to be on death row, including 19 political prisoners.

V. POLITICAL TRIALS AND ADMINISTRATION OF JUSTICE

22. It was reported by the Human Rights Commission of South Africa that political trials continue under the Internal Security Act, other legislation and common law. In the period June 1990 to June 1991, over 900 trials, involving 5,010 accused persons, were completed.

23. The Working Group noted some progressive trends that could be discerned from two recent decisions of the courts of South Africa, both at the first instance and at the appellate level. The Upington 25 (later reduced to 14), who had been on death row, had their death sentences commuted to prison sentences or were released as a result of a reversal of their convictions, and the notorious doctrine of "common purpose" was not upheld. In the defamation proceedings brought by Mr. Lothar Neethling against the Weekly Mail and Vrye Weekblad newspapers for having reported the issue and use of poison to kill anti-apartheid activists, the Working Group welcomed the decision of Justice Kriel in dismissing the case. The Working Group would welcome a similar approach being adopted in the case of the recent trial of former trade-union officials of the Congress of South African Trade Unions (COSATU), judgement for which was deferred until 15 October 1991. According to information received by the Working Group, the officials were being tried for assault and kidnapping on the basis of the "common purpose" doctrine.

24. The Human Rights Commission of South Africa further reported that it had recorded the detention of 53 political prisoners as at the end of June 1991, three of whom were detained under section 29 of the Internal Security Act and the rest in the so-called independent "homelands".

VI. FREEDOM OF EXPRESSION

25. The lifting of the state of emergency removed only some media restrictions, and laws such as the Public Safety Act of 1953 contain equally restrictive provisions. The registration requirement under which a newspaper has to deposit a substantial sum of money before it may begin to operate and can be de-registered if it does not comply within one month, was considered to be another major obstacle. It was also reported that, after 19 magisterial districts were declared "unrest areas" in August 1990 under the aforementioned Act, reporters were banned outright from certain areas under the Declaration of Unrest Areas Act of 1986, which had not applied until August 1990.

26. A representative of the organization Article 19, while recognizing improvements in this area, referred to various incidents of censorship that had occurred since March 1990. It was further reported to the Working Group that individuals were still "listed", making it illegal for them to be quoted.

27. The Working Group also received reports of journalists who had been subpoenaed to provide information concerning their sources for published articles and who had faced trial. In the case of one journalist, his refusal

to reveal his sources had led to a 10-day prison sentence. He was released on bail pending appeal.

28. On the other hand, a blanket ban on all outdoor meetings, which has been in effect for 15 years, has not been renewed this year. The Working Group noted, however, that it was still necessary to obtain permission from a magistrate to hold and participate in public meetings.

VII. TRADE UNION ACTIVITIES AND THE SITUATION OF BLACK WORKERS

29. The amendments to the Labour Relations (Amendment) Act of 1988 reinstate the situation as it was in 1982. The Working Group notes that the Government of South Africa has reinstated, inter alia, provisions that permit multiracial trade unions and the right to strike.

30. The rights of domestic and farm workers are not protected by any specific laws and they therefore have very limited rights under common law as it exists in South Africa today. The Working Group stresses the need to bring those categories of workers, as well as others not yet dealt with, under some specific labour legislation in order to meet with the requirements of the standards as laid down by ILO.

31. Advances have been made in terms of the understanding reached between workers, represented by trade unions, the Government, through the Manpower Commission; and employers, through the South African Employers' Consultative Committee on Labour Affairs (SACCOLA).

VIII. RIGHT TO EDUCATION

32. The Working Group is aware of the many difficulties created by the racially based and complex system set up under apartheid, which provided for separate educational facilities and financial assistance that was discriminatory. Despite the effort being made to extend and increase financial assistance to black schools, the system of education still remains segregated, and schools are only being opened to non-whites if the vast majority of parents in each school agree. It has been reported to the Working Group that state schools that do not choose to allow admission on a non-racial basis continue to receive a state subvention. The Working Group views that state of affairs as contrary to civilized standards.

IX. CONCLUSIONS

33. The Working Group, fully aware of the origins and gravity of the existing apartheid system, commends the positive changes that have taken place in South Africa since 1990, by which a considerable number of political prisoners were released, political organizations were unbanned, the state of emergency was

lifted and the Separate Amenities Act was repealed. It commends also the decision of the Government of South Africa to repeal some of the entrenched discriminatory acts considered as pillars of the apartheid system and the consequent repeal of the Land Acts of 1913 and 1936, the Group Areas Act and the Population Registration Act.

34. The Working Group notes with satisfaction that, according to government sources, death sentences are no longer compulsory for certain types of crime. It further notes that the notorious section 29 of the Internal Security Act has been amended, abrogating the permission for indefinite incommunicado detention. The Working Group notes further that the practice of carrying out death sentences seems to have changed for the better and that the state of emergency has been lifted. The Working Group welcomes the Labour Relations Amendment Act of 1991, which permits the creation of multiracial trade unions and reinstates the right to strike.

35. It should be stated that many more changes remain to be effected in order to abrogate the whole body of apartheid legislation. The Group stressed that the progress made in repealing important pieces of apartheid legislation did not diminish the need for a new and truly democratic constitution, which is the paramount precondition for the safeguarding of human rights.

36. The Working Group is aware that a complex system such as apartheid, which has created a systematic and institutionalized system of racial discrimination, cannot be abrogated by mere acts of legislation. Much more must be done at the economic, educational and political levels and in regard to administrative structures. South African society as a whole faces the enormous task of combating the racial prejudice and discriminatory atmosphere that lie at the various levels of public life.

37. The Working Group is of the opinion that there is still an entire range of discriminatory laws that must be abolished. Detention on remand of up to 10 days without judicial control and preventive detention of up to 14 days, periods that can be extended by application to the Supreme Court, are among the main elements that continue to infringe on personal liberty and security. In addition, the Working Group regrets that the Public Safety Act is still being used to declare "unrest areas", where measures similar to the state of emergency laws continue to be imposed. The Working Group is further of the opinion that the right to life is endangered by the system of capital punishment and that a moratorium to suspend the execution of death sentences is not enough to guarantee that right.

38. The Working Group is shocked by the acts of violence committed in provices of South Africa, especially in Natal and Transvaal. In particular, the reported partiality of security forces implied by the admitted government funding of IFP in combating the unrest in the provinces is a matter of concern regarding police ethics, which need to be studied in depth and improved.

39. It is the Working Group's opinion that the remaining political prisoners should be released and a general amnesty declared in order to allow all political exiles to return to the country with guarantees of safety and security.

40. The administrative and political structure of the Bantustans in its present form is an element of the apartheid system that remains untouched. The Working Group believes that the constitutional reform process must consider the Bantustan system, which has created economic, political and human rights problems.

41. Last but not least, the educational system, which has always been of particular concern to the Working Group, must be freed from discriminatory structures because the non-racial education of the country's youth is crucial to the future of South Africa.

42. The important role played by the international community in supporting the struggle of the people of South Africa has had a great influence on the recent events. The international community should continue to exert pressure on the Government of South Africa and should remain vigilant in its insistence on the removal of the remaining obstacles to peace.

43. The Ad Hoc Working Group of Experts on Southern Africa expresses the hope that the Government of South Africa, in a spirit of cooperation with the United Nations, will authorize it to visit South Africa to enable it to ascertain the facts and to report on the progress made in the abolition of the apartheid system.